Supreme Court, U.S.
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No. 97-1230

In The

# Supreme Court of the United States

October Term, 1997

CITY OF WEST COVINA,

*Petitioner,*

v.

LAWRENCE PERKINS; CLARA PERKINS; APRIL PERKINS, a minor, by and through LAWRENCE PERKINS,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether a police department, which seizes property from an innocent third party pursuant to a search warrant and fails to provide the innocent third party with the information necessary to retrieve the property, pursuant to a policy, denies the third party of their rights under the Due Process Clause of the Fourteenth Amendment.

2. Whether due process requires that the written notice already provided to the residents of a location searched should include basic information to adequately notify the wronged person of the information needed to obtain the return of their wrongfully seized property.

## PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding in the Courts below. However, the issues presented in the Writ of Certiorari do not involve April Perkins, the minor.



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## I.

## STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS

This Petition seeks review of a Ninth Circuit Court of Appeals decision which reversed summary judgment in favor of the City of West Covina. Specifically, the Petition seeks review of a decision finding a due process violation which was properly alleged and advanced by the Respondents in the District Court, timely raised in their appeal before the Ninth Circuit Court of Appeals, and resolved on the merits upon limited remand in the District Court and then, again, before the Court of Appeals. (App. A12-22, D1-3, and E1-8 to Petition for Writ of Certiorari, hereinafter "Pet.App.").

At issue in these proceedings is the constitutionality of a municipal policy regarding notice of seized property left at a search site by the seizing governmental agency and its police officers. Pet.App. A17. At every search of a residence in California, law enforcement officers are required to leave a form "Notice of Search Warrant" document providing certain information to residents of the location. The document, in its present form, attests to the search of the residence and lists the date of the search, the agency conducting the search, the judge who signed the warrant, as well as the name and phone number of the lead detective. Pet.App. A17-18.[1] The police also leave an inventory of the property seized.

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[1] This document, at a minimum, provides proof to the residents that the home has not been burglarized, but searched pursuant to a court order.

The District Court granted summary judgment in favor of the City's defense that it provided an adequate process for the return of unlawfully seized property and that its notice was also constitutionally sufficient. Pet.App. E. The District Court order, as stated above, followed a limited remand order by the Ninth Circuit, when it became apparent that the due process issue was, "not resolved [by the District Court] during the prior proceedings." Pet.App E2. The District Court, then, resolved the due process issue on its merits, and the case went back up to the Ninth Circuit for final resolution. The Ninth Circuit affirmed the District Court's ruling on the adequacy of the post-deprivation procedure but reversed the District Court finding that the Notice provided by the City was constitutionally adequate. The Court of Appeals found that the notice denies third-party victims of erroneously seized property basic information necessary to obtain return of that property.[2]

## II.

## SUMMARY OF ARGUMENT

The Petitioner in this case was found liable for violating the Respondent's civil rights, in not providing to the

[2] "The City [has never] disput[ed] that the procedure for obtaining the release of property and the practice of leaving a form written notice at a search site constitute city police for which it is responsible under *Monell*." Pet.App. A13. There is also no dispute that the money seized from the residence was money lawfully earned by the Perkins; the City returned the money to the family. Pet.App. B3. The money was being saved for a trip to visit April's aging grandmother in Louisiana.



Respondents necessary information critical for seeking return of, what turned out to be, their erroneously seized property. (Petition at 2). The Petitioner, and *Amici Curiae*, seek to inflame the passions of this court by presenting, as will be seen, groundless assertions that the Court of Appeals is constitutionalizing state law, is inviting federal intrusion into matters which are traditionally to be resolved by the states, and is requiring the City to give legal advice, thus increasing the potential of municipal liability. Respectfully, all of these arguments are misplaced, without foundation, and, frankly, presented only to arouse inappropriate suspicion of the Court of Appeals.

## III.

## THE PETITION MISREPRESENTS THE COURT OF APPEALS' DECISION REGARDING THE CREATION OF A "NEW" NOTICE REQUIREMENT IN POST-DEPRIVATION PROCEDURAL DUE PROCESS CASES

A substantial portion of the Petitioners' substantive brief regarding the adequacy of post-deprivation due process remedies is misplaced and beside the point. See, Petition, pp 6-15. The Petitioner presents an extended, and irrelevant, analysis of pre-deprivation and post-deprivation cases. The Respondents do not dispute the fact that this Court, generally, has recognized "two different categories of procedural due process claims. . . . " Petition at 6-7. Admittedly, there is extensive case law on the issue of what constitutes an adequate post-deprivation remedy. Again, however, this analysis is totally irrelevant, mainly because the Ninth Circuit did not decide that the post-deprivation procedure for the return of

property was inadequate. In fact, the Ninth Circuit found that the various remedies for return of erroneously seized property "satisfy the requirements of Due Process." Pet. App. A17 (citation omitted). What the Ninth Circuit found to be constitutionally inadequate was the failure of the "Notice of Search Warrant" to provide the fundamental information needed to obtain the return of the property. Without that basic information, known, at the time, only to the Petitioner, the Respondents were prevented from being able to access the post-deprivation procedures.

Each and every case cited in the Petition does not address that which the Court of Appeals found constitutionally inadequate. In each and every case cited by the Petitioner, and unlike this case, the aggrieved party possessed the basic information needed to adequately access the procedure necessary for return to the property. For example, in *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994), *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994), and *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981), the prisoners, who claimed deprivation of "property," already possessed the basic information necessary to employ the procedural remedy. Additionally, *Decker v. Hillsborough County Attorney's Office*, 845 F.2d 17 (1st Cir. 1988), *United States v. An Article of Device "Theramatic"*, 715 F.2d 1339 (9th Cir. 1983), and *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984), all involved claims by defendants in criminal proceedings who necessarily possessed the case number and information needed to seek return of property.[3] Not one of the cases cited in the

[3] California Penal Code §1538.5 specifically provides for the right of a defendant in a criminal action to seek return of his property seized pursuant to a search warrant or otherwise during the course of the criminal proceedings or after.



Petition addresses the issue of insufficient notice and the denial of access to the procedural remedy. While, admittedly, each and everyone of these cases found an adequate process in a post-deprivation context, those cases do not address the relevant issue decided by the Court of Appeals.

Again, the Court of Appeals did not find that the post-deprivation remedy was inadequate, only that notice given to the Respondents in this circumstance was constitutionally insufficient, since it prevented them from being able to demand the return of the property. The Ninth Circuit specifically found that the "Notice of Search Warrant" "did not provide essential information necessary to invoke [any] procedure: the search warrant number, the method for obtaining the number from the municipal court (such as the need to furnish the court with the address searched), or the necessity for a written request for return of the property. The notice was 'skeletal' like the notice that the *Memphis Lights* court found unconstitutional." Pet.App. A19. While the Respondents may not be able to assert the constitutional inadequacies of the "burdensome, lengthy, uncertain, or speculative," remedies, if the notice is "skeletal" and does not contain the necessary information "to invoke that procedure," then the notice is constitutionally inadequate. Without the basic information in the Notice, there is no way for an aggrieved party

to seek return of their property under the circumstances in which the Perkins' found themselves.[4]

As a result, while the Court of Appeals has required additional information to be put in the "Notice of Search Warrant," this requirement is consistent with relevant case authority and does not conflict with decision in the Ninth Circuit, decisions in other circuits, or decisions in this Court. See, *infra* §IV. The Petitioner has cited not one case that conflicts with the Ninth Circuit opinion in *Perkins v. City of West Covina*. The Ninth Circuit has set forth a basic, common sense approach, and minimally fair requirement, that municipalities provide basic information in the "Notice of Search Warrant," form (which is already left at the residence) in order to allow an aggrieved person to access the otherwise adequate post-deprivation remedies. Without such notice, the Respondents, or any innocent third-party have no "meaningful opportunity to present their case." *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S.Ct. 893, 909 (1976).

## IV.

## THE PETITION MISREPRESENTS THE COURT OF APPEALS' DECISION AS AN EXPANSION OF PROCEDURAL DUE PROCESS RIGHTS AND THERE EXIST NO CONFLICTING CIRCUIT COURT OR SUPREME COURT DECISIONS

The Petitioner complains that the Court of Appeals' decision provides for an "expansion of procedural rights

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[4] The Perkins circumstances is that of an innocent third-party whose property has been erroneously seized pursuant to a valid search warrant.



in the context of post-deprivation remedies." Pet. at 12. This, of course, is an attempt by the Petitioner to inflame this court with exaggerated claims of violations of local rights, comity, and federalism. There has been neither an expansion of procedural Due Process rights so as to create a "new font of tort law" as asserted by the Petitioner, nor has the Court of Appeals constitutionalized any state law. Finally, there is no Ninth Circuit conspiracy "to expand federal rights under the procedural component of the Due Process Clause." See, Pet. at 21, fn. 2.

The impetus for this case comes in the unique nature of the facts at issue. This court will note that the Perkins were the victims of an erroneous seizure of property pursuant to a properly executed and procured search warrant. This case presents rather unique facts: the Perkins were the unintended victims of a properly executed and procured search warrant. They were "innocent victims" in every sense of the phrase. The Petitioner has never disputed this fact. Under the normal course of events, the execution of a search warrant will presumably result in the seizure of property which is contraband or otherwise used in a crime. This is the rather unique case where non-contraband property was seized from an innocent third-party under a sealed search warrant. These facts have exposed the inadequacy of the notice given to innocent persons by the municipality in "Notice of Search Warrant." Nevertheless, this circumstance is not unheard of and due process requires protection for these innocent third-parties.

As far as counsel can see, no other decision in this Court or the Circuit Courts of Appeals have addressed the issue of the adequacy of the information contained in

the "Notice of Search Warrant." The Petition cites not one case that addresses the issue. For the Petitioner to assert that this minimal notice requirement conflicts with this court's decisions and decisions in other circuits is, at best, exaggeration, and, more accurately, incorrect.

The facts of this case expose the inadequacy of the required notice. The notice is inadequate in that it did not provide the basic and elemental information needed to adequately seek return of erroneously seized property. Mr. Perkins "made a number of telephone calls and at least two trips to the City's police station, one with his daughter and a trip to the municipal court. While the police told him he needed a 'court order' there is no evidence that they explained how to *go about getting the correct warrant number* or pointed out the need for a written request." Pet. App. A19. The Respondents' attempt to access the procedure for return of property failed for one specific reason – the information given to them was inadequate to obtain a hearing before the appropriate authorities to seek return of the property. Mr. Perkins' failures in court and at the police station are a testament to that fact. The Court of Appeals decision merely interprets what notice is adequate, and, by no stretch of the imagination does it establish a new right; it merely clarifies the notice requirement.

In *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1, 98 S.Ct. 1554 (1978), this court dealt with a remarkably similar set of circumstances. In *Memphis Light*, this court found that the procedures for resolution of disputed utility bills was adequate and constitutionally sufficient. However, this court also found that the *notice* to the



customers was insufficient to satisfy due process. As the Court of Appeals quoted

> [T]he notification procedure, while adequate to apprise the [plaintiffs] of the threat of termination of service, was not "reasonably calculated" to inform them of the availability of "an opportunity to present their objections" to their bills. *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950). The purpose of notice under the Due Process Clause is to apprise the effected individual of, and permit adequate preparation for, an impending "hearing." Notice in a case of this kind does not comport with constitutional requirements when it does not advise the customer of the availability of a procedure for protesting a proposed termination of utility service as unjustified. As no such notice was given respondents – despite "good faith efforts" on their part – they were deprived of the notice which was their due.

*Memphis Lights*, 436 U.S. at 14-15 (footnotes omitted).

The attempts in the Petition to distinguish *Memphis Lights* is inadequate. First, the Petitioner seeks to distinguish the case by asserting that the utility "had authority over the 'res' in question. . . . " This attempt to distinguish *Memphis Lights* fails for specific reasons. First, the City has "never disputed that the procedure for obtaining the release of property and the practice of leaving a form written notice at a search cite constitute City policy for which it is responsible under *Monell*." Pet. App. A13. The Petitioner cannot now claim some sort of impotency with

regard to the issues in this case. Second, the basic foundation and essence of due process is the providing of adequate notice to the person whose property interests are put in jeopardy. *Mathews v. Eldridge*, 424 U.S. at 348, 96 S.Ct. at 909. Without notice of the right to seek return of the property, *and the notice of the means by which to achieve such*, no lay person could negotiate the complications and mire of the legal process. The search warrant number is absolutely critical to even obtaining a hearing in court. As such, it is the seizing agency's duty to give the proper notice in the case, primarily because it is in the best position to do so. Any agency other than the Petitioner is in no position to give adequate notice to the Respondents. Even in *Mathews*, this Court recognized that "process" requires that the person be given written notice of the reasons for the deprivation and notification "informing" the person of his right to seek reconsideration by the state agency involved. *Mathews*, 424 U.S. at 338, 96 S.Ct. at 904.

The other distinction that the Petitioner seeks to draw in *Memphis Lights* is the fact that the utility in that case was the agency which developed the "internal procedure for the resolution of disputed bills prior to a proposed termination." Petition at 12 (citation omitted). Clearly, the Court of Appeals in this case found that the Petitioner gave only "skeletal" notice to the Respondents with regard to their right to seek return of the property. As such, the Petitioner recognizes it has an obligation to provide some notice at the search site. To the extent that the courts are a different governmental agency, they are so inextricably intertwined with Petitioner in the search warrant process, at least at this stage, that it is not unfair to impose this minimally additional notice requirement in



the "Notice of Search Warrant" form. The burden on the municipality is minimal, and the benefit is enormous.

With regard to the text of the notice, the Ninth Circuit indicated that, at a minimum, the notice should inform the recipient of the procedure for contesting the seizure, i.e., that the aggrieved party must seek a court order, and provide "any additional information required for initiating that procedure in the appropriate court." Clearly, this means that "the notice must include the search warrant number or . . . [other] means of identifying the court file." *Id.* This is information is appropriately and accutely directed to the municipality's rights and obligations regarding the procurement, service, and execution of a search warrant.

## V.

## THE PETITION MISREPRESENTS THAT THE COURT OF APPEALS' DECISION REQUIRES THE GIVING OF "LEGAL ADVICE"

Both the Petitioner and *Amici Curiae* erroneously assert that the Court of Appeals' decision requires the giving of legal advice. This clearly overstates the Court of Appeals' decision. As stated previously, in reality, the only additional information that is needed in the "Notice of Search Warrant" form (which is already served at the search site), is that additional basic information which identifies the search warrant number given to the case to allow identification of the court file and the direction to seek a court order. This basic, fundamental, and rudimentary information allows the aggrieved party to initiate the

procedure for the return of property. A short plain statement about California Penal Code §1536, the right to petition the court for return of property along with the search warrant number or where to locate it, is all the information that is needed to satisfy the requirements of due process as stated by the Court of Appeals. It is the failure to provide this minimal information that led to the due process violation. Municipalities routinely provide similar such notice in numerous contexts. To assert that this information, somehow, constitutes legal advice to the recipient of the "Notice of Search Warrant" expands the parameters of the practice of law to an absurd degree.

Moreover, this requirement does not expose the municipality to untold liability. The assertion that municipalities will be exposed to any improper liability is absurd and needs no further comment.

## VI

## CONCLUSION

For the foregoing reasons, Respondents respectively request that the Court deny the Petition for Writ of Certiorari.

DATED: March 30, 1998

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